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No. 94-1888

Supreme Court, U.S.
FILED
JUN 19 1995
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

IONA SIME, et al.,

Petitioners,

v.

CITY OF ROHNERT PARK,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate District

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRITT OF CERTIORARI

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QUESTIONS PRESENTED

Does an unreported Decision of the California Court of Appeal meet any of the criteria of this Court's Rule 10, or any other criteria justifying affirmative certiorari discretion where:

1. The case is a breach of contract claim and decides, without implicating any Federal question, that no breach of contract occurred?

2. The alleged Federal question presented by the Petiiton for Certiorari was neither pleaded in the trial court, nor reached by the California Court of Appeal?

3. The alleged Constitutional violation, the impairment of Petitioners' contract by the passage of an initiative measure, was specifically contemplated by the parties and included as a condition subsequent term of the contract?

4. The question presented is a unique local situation not likely to be repeated, and was decided in a way which conflicts with no applicable decision of this Court?

5. There was no alleged "impairment of contract" because a valid state law allows a contractual change when it occurrs by "the operation of law. . . . "?

TABLE OF CONTENTS

Page

QUESTONS PRESENTED i

I. INTRODUCTION..... 1

II. STATEMENT OF THE CASE..... 2

III. ARGUMENT 5

IV. CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

Allied Structural Steel Company v. Spannaus, 438 U.S. 234 (1977) 5

Bright v. Bechtel, 780 F.2d 766 (9th Circuit 1986) 5

C-Y Development Corp. v. City of Redlands, 137 Cal.App.3d 926 (1982) 4

Grayson v. Harris, 267 U.S. 352 (1925) 7

Herb v. Pitcairn, 324 U.S. 117 (1945) 7

Interstate Marina Development Company v. County of Los Angeles, 155 Cal.App.3d 435 (1984) 5

Loretto v. Teleprompter Manhattan Corp., 458 U.S. 419 (1982) 6

U.S. Trust v. New Jersey, 431 U.S. 1 (1977) 5

Yee v. City of Escondito, 503 U.S. ___, 118 L.Ed.2d 153 (1992) 6

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I.

INTRODUCTION

In attempting to persuade this Court to review the unpublished decision of an intermediate California Appellate Court which never reached or decided a Federal question but decided the case on the basis of the interpretation of the contractual language, as well as, alternatively, the application of an unchallenged California Law, Petitioners have badly distorted the holding of the California Court and have ignored this Court's Rule 10, which requires "special and important reasons" for

the exercise of certiorari jurisdiction. It is not enough for certiorari consideration that the matter is important to the Petitioners. There must be a departure from Constitutional Standards. There was none here because the California court reached no Federal question but decided the case on adequate state grounds. Nor is there a conflict between the ruling of the court below and any other reported state or federal case. Further review of this case would be of significance to the parties, but would be utterly without precedental value in deciding other controversies, whether existing or potential.

II.

STATEMENT OF THE CASE

An initiative ordinance, the validity of which is not disputed by Petitioners, superseded an existing contract ("The Green Book") on the subject of control of rents charged by the owners of mobilehome parks in the City of Rohnert Park. The initiative rent control measure was less favorable to the economic interests of the owners of the mobilehome parks than was the existing Green Book contract. The park owners sued for their lost profits when the initiative was substituted for The Green Book. The denial of these profits is the alleged impairment of contract creating the Federal question for certiorari jurisdiction. In fact, both the contract itself (in its §14, quoted at Appendix 3) and California Civil Code §1511(1) (Appendix 10) in effect at the time the contract was entered into by the parties, allowed for the abrogation of The Green Book contact under certain circumstances. The holding of the California Court of Appeal is that these circumstances

were met in both respects and, therefore, there was no breach of contract. Petitioners' disagreement with the Court of Appeal and their cry for their lost profits does not make a Federal question. There is no possible impairment of contract when the parties agree that the contract may be changed under certain circumstances and those circumstances have occurred. The California Court of Appeal did not need to pass on any Federal question because the state law rulings were each independently decisive. Review has been denied by the California Supreme Court (Appendix 30) and these state law decisions are final.

A number of misstatements of fact and law are set forth in the Petition which Respondent feels must be corrected at this point. First, The Green Book Contract was between the owners of all of the City's mobilehome parks and the City itself, but was not signed by any tenants in the mobile home parks or by any group purporting to bind the citizens of the City of Rohnert Park. Second, the City did not void The Green Book contract but merely obeyed the requirements of California Elections Code Section 4013 (Appendix page 9), which makes an initiative measure voted in by a majority of the voters a valid and binding ordinance of the City. Third, the Petitioners have invoked Section 3-G of the initiative by quoting a part of it "entirely out of context" as stated by the Court below (Appendix page 13) in rejecting Petitioners' same argument. Petitioners' interpretation of that clause would require the City to nullify an initiative ordinance, a power which the Court below correctly held the City did not have under California Law. This is

clearly a matter of state law only. In California, an initiative measure prevails over a conflicting local enactment. *C-Y Development Corp. v. City of Redlands*, 137 Cal.App.3d 926, 932 (1982).

Fourth, it is not correct that the mobilehome park owners challenged the initiative ordinance as an impairment of contractual rights in violation of the United States Constitution in their lawsuit. In fact, their First Amended Complaint (the final pleading in the action) only alleges an impairment of their contractual rights under the State Constitution (First Amended Complaint, page 9). Next, it is not correct that the California Court of Appeal "excused the City's breach of contract under the doctrine of impossibility. . . . " by side stepping the impairment of contract argument (Petition, page 8). The Court of Appeal held that the Petitioners had specifically agreed to be bound by a subsequent change in the law in Section 14 of The Green Book contract and that, in any event, California Civil Code Section 1511, subdivision 1 (quoted Appendix page 10), excuses the performance of a contractual obligation when it is prevented by the operation of law, and that the parties to The Green Book contract were bound by this provision of law in making their contract.[1] Lastly, it is absurd and manifestly incorrect for Petitioners to claim that the California Court of Appeal ruled that the initiative power of the electorate of a California city must be upheld even if its exercise

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[1] Respondent City, as is undisputed, took no part in the passage of the initiative measure and thus no question of estoppel or bad faith because of The Green Book's abrogation is presented. Appendix pages 15-16.

breaches rights protected by the United States Constitution (Petition, page 8). The California Court of Appeal made it crystal clear that no such claim was made:

> "We do not reach the issue of impairment and so need not address the impairment cases relied upon by the park owners, e.g., *U.S. Trust v. New Jersey*, 431 U.S. 1 (1977), *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234 (1977), and *Interstate Marina Development Company v. County of Los Angeles*, 155 Cal.App.3d 435 (1994)." (Appendix page 9.)

III.

ARGUMENT

The California Court of Appeal reached no Federal question; it simply decided that the parties to The Green Book anticipated in the agreement that a change in the governing law, including a change by the initiative process, would change their contractual obligations and, alternatively, that regardless of the terms of the contract itself, an unchallenged California Law excused the performance of a contractual obligation changed by operation of law (California Civil Code Section 1511(1), quoted Appendix 10). It is not unconstitutional for California law to provide, at least as to contracts made after the date of such a law, that a party cannot be required to violate a law to avoid liability for a breach of contract. See *Bright v. Bechtel*, 780 F.2d 766, 772 (9th Circuit 1986). Thus, it is entirely inaccurate for Petitioners to charge that the California Court of Appeal "ignored the Federal Constitutional limitations on initiative legislation." (Petition, page 13.) It is also clear that not a single criteria provided for

in this Court's Rule 10 is even arguably presented by this case.

This case turns upon the unique contractual language of The Green Book contract and its interpretation would have absolutely no bearing on any significant Federal question or, indeed, any other issue which might be litigated besides the one of whether Petitioners should be able to collect damages for breach of contract.[2]

Similarly, Petitioners dispute the conclusion of the California Court of Appeal that the initiative measure was a change of law beyond the control of the parties by claiming that Section 3-G of the initiative measure allowed the Respondent to abrogate the initiative measure to protect the contractual rights of the Petitioners under The Green Book contract. However, and once again, this is purely a question of State law interpretation of contract. The California Court of Appeal rejected Petitioner's interpretation of Section 3-G as an unreasonable reading of the ordinance. Such an interpretation does not present a Federal question. The ordinance challenged by the Petitioners simply does not impair the obligation of their contract because they knew that their contractual rights were subject to change in accordance with existing California Law. The interpretation of California Law is

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[2] "This court has consistently affirmed that states have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *Loretto v. Teleprompter Manhattan Corp.*, 458 U.S. 419, 440 (1982); quoted with approval, *Yee v. City of Escondito*, 503 U.S. ___, 118 L.Ed.2d 153 (1992).

exclusively within the determination of the California Courts. *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945); *Grayson v. Harris*, 267 U.S. 352, 358 (1925).

IV.

CONCLUSION

There is no Federal question for this Court to review and, if there were, it would be of such narrow interest as to clearly lack the importance and significance of cases to be adjudicated in The Supreme Court of the United States.

Dated: June 15, 1995

Respectfully submitted,

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